

OLC 78-0399/93

15 June 1978

MEMORANDUM FOR THE RECORD

SUBJECT: Charter Legislation Hearings

1. The Senate Select Committee (SSCI) today received testimony on S. 2525, the intelligence charter legislation, from Gen. (ret.) Richard G. Stilwell and Mr. John S. Warner, representing the Association of Former Intelligence Officers (AFIO), and from Mr. Morton Halperin, representing the Center for National Security Studies. Members of the SSCI present for all or part of the hearing were: Senators Walter Huddleston, Birch Bayh, Barry Goldwater, and Joseph Biden.

2. General Stilwell provided comments on various provisions in each of the titles of S. 2525. In addition, the AFIO representative commented generally on the charter bill, supporting legislation to clarify the charter and guidelines for intelligence agencies and officers, but rejecting S. 2525 as overly detailed, too restrictive, and so ambiguous that it "would require almost as many lawyers as case officers." As to Title I, General Stilwell urged that the proposed Director of National Intelligence (DNI) should not be separated from heading the CIA; that many of the authorities in the bill running to the DNI should more properly run to the CIA as an organization; that intelligence agencies should not have a mandate to conduct counterterrorism activities; that there are far too many reporting requirements in the bill; that the procedures and requirements regarding covert actions are too burdensome and impinge on Presidential prerogatives; and that the charter should continue protection for a secret intelligence budget and for confidential funds authority.

3. The only other title on which General Stilwell offered detailed comments was Title II. The most significant of these comments was a recommendation that the "reasonably believed" standard in the title for collection of certain categories of information, was too high; the AFIO representative recommended that the Committee consider a dual standard--a lower one for collection and a higher standard for the retention or dissemination of intelligence on U.S. persons.

4. Mr. Halperin's comments concerned, among other things, the need to have statutory guidelines for intelligence agencies; that the bill should adhere more closely to the Church Committee recommendations; that the Freedom of Information Act (FOIA) is needed now more than ever (in rebuttal to General Stilwell's recommendation that the legislation amend the FOIA to lessen its impact on intelligence agencies);\* that covert actions should be undertaken openly as part of American foreign policy; that the analysis functions of CIA should be separated from the collection and operations functions; that there should be a one-line public intelligence budget figure; and that, in certain instances, the U.S. should have the "authority" to seek to influence foreign governments, but only "non-violently" (essentially on a "quid pro quo basis," since other governments certainly attempt to influence or "lobby" the U.S. Government).

5. Senator Bayh questioned General Stilwell as to whether the General was indicting the Committee's security record, since the General had recommended in his remarks that the legislation should address the matter of physical security (of the oversight committees) and secrecy agreements by congressional staffers. General Stilwell said he was commenting generally on the question of congressional security, and in no way meant to impugn the SSCI's security record.

6. Senator Bayh conceded that the Committee probably had been overzealous in including numerous reporting requirements in S. 2525, and that a few "good" reporting provisions probably would be more desirable. On the matter of GAO auditing of intelligence activities and expenditures, Senator Bayh said the relevant provisions in S. 2525 were intended to assist the SSCI so that the Committee would not have to develop its own audit mechanism.

7. Senator Huddleston, in a general statement on S. 2525, stressed that the bill will change, based in part on discussions between the Committee and Executive agencies.

8. In commenting on the matter of the DCI remaining as head of the CIA, Senator Bayh asked General Stilwell why a provision such as in section 117 of Title I would be undesirable, since it only provided a mechanism to separate the two positions if the President so desired. (The Senator did not indicate that the Committee had decided how it would come out on this issue.)

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\* In this context, Mr. Halperin specifically mentioned an affidavit by Mr. John Blake of 7 June 1978 and a recent exchange of views Mr. Halperin had with the DCI, both on the issue of making public the fact and extent of CIA activities in the academic community.

9. Senator Goldwater strongly indicated support for retaining the capability and authority to provide support to foreign governments who so request (he noted this in the hypothetical context of a request from the Italian Government). In response to Mr. Halperin's remarks expressing the need to ensure that intelligence agencies not maintain improper information on U.S. persons, Senator Goldwater posed the question of whether the concern should run instead to all Federal agencies (not only the CIA) who pry into the affairs of U.S. citizens.

10. Senator Goldwater also expressed support for retaining a covert action capability, and that the only thing to worry about is that the agencies involved not have authority "to initiate or conduct such activities on their own."

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